

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Harman Analyst: Norman Catelli Bill Number: AB 339
Related Bills: See Legislative History Telephone: 845-5117 Introduced Date: February 10, 2005
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Limited Partnership Act of 2005

SUMMARY

This bill would update California law by adopting the newest version of the Uniform Limited Partnership Act.

This analysis addresses only those provisions of the bill affecting FTB.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to promote efficiency, clarity, and coherence in the laws of limited partnerships.

EFFECTIVE/OPERATIVE DATE

The general provisions of this bill are effective and operative on January 1, 2006. Specific terms of the bill apply the new limited partnership provisions to all limited partnerships formed on or after January 1, 2006, and electively to limited partnerships formed before January 1, 2006, with certain exceptions. The new provisions, with modifications, govern all limited partnerships after January 1, 2008, therefore, repealing the old limited partnership provisions.

POSITION

Pending.

ANALYSIS

STATE LAW

The California Revised Uniform Limited Partnership Act (RULPA) (Corporations Code sections 15611-15723) governs limited partnerships formed on or after July 1, 1984. Partnerships formed before this date may elect to be governed by RULPA. The Uniform Limited Partnership Act (Corporations Code sections 15501-15533) governs limited partnerships formed before July 1, 1984, that have not elected to be governed by RULPA. The Uniform Partnership Act of 1994 is the governing act for general partnerships and limited partnership provisions not provided for in the limited partnership acts. This "linkage" is accomplished through provisions in the limited partnership acts stating, "In any case not provided for in this [Act] the provisions of the Uniform Partnerships Act govern."

Board Position:

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Department Director

Date

Gerald H. Goldberg

4/27/05

Under current state tax law, limited partnerships organized in this state, registered to do business in this state, or doing business in this state are subject to an annual tax equal to the minimum franchise tax that is currently \$800. For purposes of that tax, a limited partnership is defined as any partnership formed by two or more persons having one or more general partners and one or more limited partners.

Under existing federal and state tax laws, rules have been established that prescribe certain results for partnerships based on differences between the liability and authority of general partners as compared to limited partners. For example, for purposes of allocating and apportioning income among members of a unitary business, determinations of ownership and control vary depending on whether a partnership is a general partnership or a limited partnership, or whether a partner is a general partner or a limited partner.

THIS BILL

This bill creates a stand-alone act to govern limited partnerships. Provisions of the bill are mandatory for limited partnerships formed on or after January 1, 2006, and are elective for limited partnerships formed before January 1, 2006. The provisions of this bill govern all limited partnerships on January 1, 2008.

This bill generally restates and modernizes the laws governing limited partnerships. Although a limited partnership still consists of a general partner and a limited partner, provisions allow a general partner to be shielded from liability for the debts and obligations of the limited partnership. This is accomplished by including in the certificate of organization a statement that the limited partnership is a limited liability limited partnership (LLLP). In an LLLP no partner—whether general or limited—is liable on account of partner status for the limited partnership's obligations. Both general and limited partners benefit from a full, status-based liability shield that is equivalent to the shield enjoyed by corporate shareholders, limited liability company members, and partners in limited liability partnerships.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

It is clear that a limited partnership organized as an LLLP would have one or more general partners and one or more limited partners. Consequently, an LLLP organized in this state, registered in this state, or doing business in this state would be subject to the annual tax imposed on limited partnerships. However, the application of other provisions of existing law to an LLLP may require modification to reflect changes in the liability of a general partner for the obligations of an LLLP, for example, the ability of FTB to collect the annual tax from a general partner. Department staff is continuing to review these changes to identify areas where revisions may be necessary. If additional considerations are identified they will be discussed with the analysis of this bill as amended April 11, 2005.

This bill would create a different kind of limited partnership. Accordingly, there are no tax implications from this bill.

LEGISLATIVE HISTORY

AB 583 (Sher, Stats. 1996, Ch. 1003) enacted the Uniform Partnership Act of 1994, applicable to partnerships formed on or after January 1, 1997.

PROGRAM BACKGROUND

The National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 112th year, provides states with legislation that brings clarity and stability to critical areas of state statutory law. The most recognizable act, of many uniformity proposals, this organization promulgated is the Uniform Commercial Code (UCC). The NCCUSL first promulgated the Uniform Limited Partnership Act (ULPA) in 1916, and, with the Uniform Partnership Act (UPA), has been the basic law governing partnerships in the United States. The first revision of ULPA occurred in 1976, with further amendments occurring in 1985. However, changes in modern business practices made it necessary to update and modernize the ULPA beyond the 1976 and 1985 revisions. Thus, the NCCUSL has adopted a new, more flexible version of the Uniform Limited Partnership Act (ULPA 2001). This act, modified for California purposes, is the foundation of this bill.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Illinois and Minnesota adopted ULPA 2001. *Florida* has legislation pending to adopt ULPA 2001. *Massachusetts, Michigan, and New York* have not adopted ULPA 2001.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until implementation requirements have been finalized but are anticipated to be minor.

ECONOMIC IMPACT

Revenue Estimate

This bill would have no impact on state income tax revenues.

This bill creates the option for a business to form as a new type of limited partnership, known as an LLLP. An LLLP would be subject to the same taxes applicable to a limited partnership, so there would be no change to state income tax revenues.

LEGAL IMPACT

This bill establishes a four-year statute of limitations (SOL) for creditors to sue a limited partnership in an effort to collect a debt. That SOL is four years after a notice of dissolution is published. The FTB's general SOL for making a proposed assessment of tax is four years after the tax return is filed, which would generally be after the notice of dissolution is published. The abbreviated SOL established by this bill could make it difficult for FTB to assess and collect the annual tax from the partnership or a general partner.

POLICY CONCERNS

Provisions of this bill would allow a limited partnership to shield a general partner from liability for the obligations of the partnership by becoming an LLLP. That liability protection is similar to the protection provided by limited liability companies, which is subject to a fee in addition to an annual tax. There are non-tax reasons for the selection of a business form, but if all things are equal, the form with the lower tax cost will be favored. The impact could be the erosion of limited liability fee revenue.

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